IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 383 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMLESHBHAI AMBALAL PATEL THROUGH HEIRS & LEGAL REPRES

Versus

COMPETENT AUTHORITY AND DY COLLECTOR

Appearance:

1. Special Civil Application No. 383 of 1994

MR PM BHATT, Advocate, for Petitioner No. 1-1/2

Mr. R.C. Kodekar, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 13/08/2004

ORAL JUDGEMENT

1. The petitioners have challenged the order dated 16th March 1984 made by the Competent Authority,

Ahmedabad, declaring an area of 1597 sq.mtrs of the petitioners' land as excess vacant land as on 28.2.1976 and the order of the Additional Urban Land Tribunal dated 28th November 1988 confirming the order of the Competent Authority in appeal filed under the provisions of Section 33 of the Urban Land (Ceiling & Regulation) Act, 1976.

2. The learned advocate for the petitioners has contended that there was construction on the land which was declared as excess land and, therefore, it could not have been so declared under the provisions of the said Act. It was submitted that the permission for construction was obtained and the constructed area ought to have been excluded.

3. It is clear from the order of the Competent Authority dated 16th March 1984 at Annexure "A" to the petition that the petitioners did not prove before the Competent Authority that any authorised construction was made on the property. The attention of the Competent Authority was specifically directed to this aspect of the matter and, on the basis of material on record, it was held that there was no proof adduced in support of the contention that any authorised construction was put up on the land in question. The Competent Authority referred to the report of the Surveyor and found that, from the total area of 2554.36 sq.mtrs. there was construction shown in a portion of 784.55 sq.mtrs and rest of the land was vacant land as per the Surveyor's' report. It was found that the petitioners had not produced any evidence to show that the construction on the said portion was authorised. The Competent Authority came to the conclusion that there was a reason to believe that the said construction was unauthorised. Accordingly, the area of 1597 sq.mtrs was declared as surplus. This order came to be confirmed in appeal on 28th November 1988 by the Additional Urban Land Tribunal.

4. Even before the Tribunal, the petitioners were not able to show that any permission was obtained in respect of the constructed portion. In paragraph 4 of the order in appeal, the Tribunal held that, though it was claimed that sheds were built and occupied by the servants in 1962 and legal plans and permission had been produced by the appellants, going through the papers, the only plan available was undated, and unsigned by anybody. It was held that no permission was found among the papers produced by the appellants and none were produced during the appellate hearing. The Appellant Authority, therefore, confirmed the findings of the Competent Authority that the sheds in question were unauthorised

construction.

5. Admittedly, unauthorised constructions were required to be included in computing the vacant land. Neither the Appellate Authority nor the Competent Authority has committed any error in exercise of their jurisdiction in holding that the area of 1597 sq.mtrs was vacant land as on 28.2.1976. Their decisions are based on material on record and, hence, justified. It also appears from the record that the possession of the land declared as surplus was taken over by the Authorities on 11.6.1993. A copy of the panchanama showing that the land was taken over is annexed to the affidavit-in-reply filed on behalf of the respondent, in paragraph 6 of which this fact has been stated on oath. Reliance was sought to be placed on some permission papers which were never produced before the concerned Authority. This would not be permissible. The Tribunal has not committed any error in exercise of its jurisdiction and the findings of the Competent Authority and the Tribunal are based on the relevant material on record.

6. In this view of the matter, there is no warrant for interference with the impugned orders in exercise of jurisdiction of this Court under Article 227 of the Constitution of India. The petition is, therefore, rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

(R.K.Abichandani, J.)

(swamy)